



GLENN A. CUNHA
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

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August 22, 2013

Robert O'Keefe, Chairman
Board of Selectmen
Winchendon Town Hall
109 Front Street
Winchendon, MA 01475

Dear Chairman O'Keefe:

The Office of the Inspector General ("Office"), during its initial review of certain documents provided on July 24, 2013 by the Town of Winchendon ("Town"), has discovered an issue that it wants to bring to your immediate attention. In the opinion of the Office, the Board of Selectmen ("Selectmen") during their June 17, 2013 meeting inappropriately moved an agenda item, the discussion of a Massachusetts General Law Chapter 30B ("Chapter 30B") real estate procurement, out of the public meeting and into executive session, violating Massachusetts General Law Chapter 30A, the Open Meeting Law. The Office understands that the authority to determine if a violation occurred rests, primarily, with the Division of Open Government within the Office of the Attorney General and as such that division has been copied on this communication. The Office has also reviewed opinion letters issued by the Division of Open Government addressing comparable circumstances.

The minutes of the public meeting on June 17, 2013 indicate that the Selectmen discussed two agenda items to be moved into an executive session: the discussion of a contract negotiation with non-union personnel and a real estate transaction. According to the minutes prior to the vote for the executive session, then-presiding Chair Elizabeth Hunt determined for the record that a public discussion of an unspecified real estate transaction could have a detrimental effect on the negotiating position of the Town. The Selectmen voted and the executive session commenced. While in the executive session, the Selectmen discussed a specific Chapter 30B real estate procurement.

The Office's position is that this Chapter 30B real estate procurement is not a real estate purchase that can be a purpose for an executive session. The real estate exception to the Open Meeting Law is inapplicable to this type of transaction under Chapter 30B, Section 16, because the Chapter 30B request for proposals creates an advertised proposal process that the Town must follow in acquiring real property. The process creates an open and fair competition that places all proposers on common footing; it solicits information that allows manageable and meaningful

comparisons of offers and bases decisions solely on the information solicited.¹ The Chapter 30B requirement that the process be open cannot be circumvented, under the circumstances herein, by invoking the Open Meeting Law's limited executive session purposes. In the Office's opinion, the Selectmen violated the Open Meeting Law by failing to list topics with sufficient specificity in its meeting notices and by improperly discussing matters behind closed doors that were not appropriate for executive session.

The Office's position is consistent with the Town's own assessment made during the April 30, 2013 Selectmen's meeting. At that meeting it was pointed out that what would follow with respect to this specific Chapter 30B real estate procurement was not a negotiation in the typical sense of the word; "*the proposal is what it is and the number is what it is.*" The future actions regarding this Chapter 30B real estate procurement were described more as ministerial execution as opposed to negotiation. For this real estate procurement, the Town utilized Massachusetts General Law chapter 30B, Section 16 and even included a proposed purchase and sale agreement in its request for proposals. The Town also had a public meeting regarding the selection of the winning bidder and the Selectmen publicly voted on approving that bidder.

The Town's past actions, however, make the vote on June 17, 2013 inconsistent. The Town had already declared the winning bidder in an open meeting and the price was public knowledge. While the Town was in negotiations with the winning bidder, those discussions in the executive session would not have a detrimental effect on those negotiations. Acting Chair Hunt's desire not to discuss the recent issues involving the real estate procurement in public does not create the detrimental effect that Massachusetts General Law chapter 30A excuses from discussion at an open forum.

The Office's goal in alerting you to this matter is so that you may now take appropriate actions to cure this defect prior to conveyance of the property to the Town. Violations of Chapter 30A can sow seeds of mistrust between the town government and its citizens. The Town was required to follow a Chapter 30B real estate acquisition process; the Town should avoid even the slightest appearance of a secretive or closed door process.

Thank you for your attention in this matter.

Sincerely



Glenn A. Cunha
Inspector General

cc: John Giorgio, Member, Kopelman and Paige
Jason Panos, Associate, Kopelman and Paige
Amy Nable, Director of the Division of Open Government, MA Attorney General's Office

¹ Commonwealth of Massachusetts Office of the Inspector General, CHAPTER 30B MANUAL: LEGAL REQUIREMENTS, BEST PRACTICES AND SOURCES OF ADVICE FOR PROCURING SUPPLIES, SERVICES AND REAL PROPERTY, 79, (Commonwealth of Massachusetts Office of the Inspector General 6th ed. 2011).